

AMENDED IN SENATE APRIL 21, 2003

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 543

Introduced by Senator Machado

February 20, 2003

An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill would require the operator of a groundwater cleanup operation, as defined, to hold any water produced by the operation in constructive trust for the benefit of ~~any~~ every public water system that has suffered injury as a result of the contamination of that water, ~~unless certain requirements are met. The bill would set forth when the constructive trust would be discharged.~~ The bill would prohibit the state board from granting a permit or license to appropriate water, or approving a transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water system injured by the contamination. *The bill would provide that the temporary custody of*

water pursuant to a groundwater clean up operation is not a beneficial use of water.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP
OPERATION

1249. The operator of a groundwater cleanup operation shall hold any every water produced by the operation in constructive trust for the benefit of ~~any~~ every public water system that has suffered injury as a result of the contamination of that water, ~~unless. Unless otherwise provided by agreement, or a court has determined between the operator and the owner of the injured public water system or systems, the constructive trust shall only be deemed discharged upon a determination by a court of competent jurisdiction that the operator has provided replacement water supply to the a replacement water supply to every public water systems system injured by the contamination.~~

1249.2. ~~The state~~ (a) The board may not grant a permit or license to an operator of a groundwater cleanup operation for the appropriation of water, or approve the transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water systems injured by the contamination.

(b) Nothing in this section may be construed as creating or extending the board's jurisdiction over the appropriation or administration of groundwater as may otherwise be provided by law.

1249.3. Notwithstanding any other provision of law, and for the purposes of this chapter, the temporary custody of water pursuant to a groundwater cleanup operation shall not be considered a beneficial use of water.

1 1249.4. (a) The definitions set forth in this section govern the
2 construction of this article.

3 (b) “Injury” or “injured” means a ~~diminution in value~~
4 *material diminution in value of a public water system*, or loss of
5 a ~~right~~ *public water system’s ability* to store, extract, treat, or
6 distribute groundwater for public use.

7 (c) “Operator” means any person engaged in a groundwater
8 cleanup operation or agent of that person designated by the
9 operator for that purpose.

10 (d) “Public water system” has the same meaning as that set
11 forth in subdivision (h) of Section 116275 of the Health and Safety
12 Code.

13 (e) “Replacement water supply” means an alternative supply
14 of water of comparable quantity and quality to that existing prior
15 to the contamination of that water, including water that is required
16 for summer time “peaking” and fire flow pipeline distribution
17 capacity.

18 (f) “Groundwater cleanup operation” means any operation or
19 program designed or implemented to remediate or abate
20 groundwater contamination pursuant to an approved work plan or
21 order issued by a federal agency or a state agency, including a
22 regional board, for the cleanup or remediation of contaminated
23 groundwater.

24 (g) “*Work plan*” means a schedule of actions to clean up or
25 remediate contaminated groundwater; that is approved by a state
26 or federal agency, for the purposes of the clean up and
27 remediation.

